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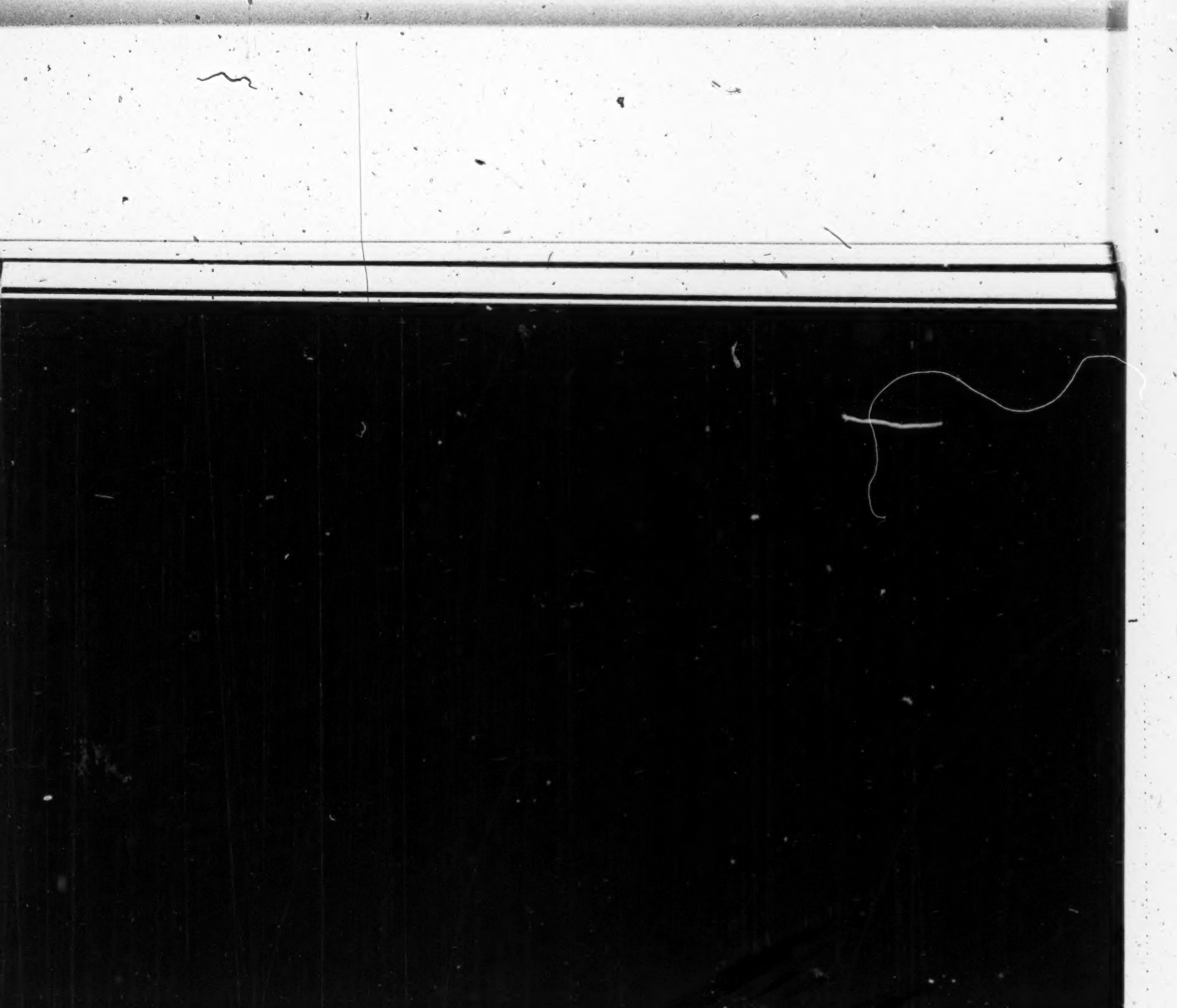

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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. —, Original

THE UNITED STATES OF AMERICA, PLAINTIFF

v.

THE STATE OF ALABAMA

MEMORANDUM FOR THE UNITED STATES IN RESPONSE TO THE STATE'S RETURN TO THE RULE TO SHOW CAUSE

On November 18, 1940, the United States asked leave to file a complaint against the State of Alabama to quiet title to three tracts of lands acquired respectively October 1, 1936, December 10, 1936, and March 10, 1937, which have been sold to the State for unpaid taxes due October 1, 1937. On November 25, 1940, this Court issued to the State of Alabama its rule to show cause why leave to file should not be granted. On January 6, 1941, the State made return to the rule setting forth nine objections to maintenance of the proposed action. It is the Government's view that a short response to these objections may facilitate this Court's consideration of the State's return.

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As the complaint discloses (par. VI) the United States contends that the claims of the State to an interest in the lands are invalid as amounting to an attempt to tax property of the United States and as resulting from judicial proceedings in which the United States was made defendant without its consent. As summarized in the supporting brief, the objections raised by the State's return are in substance as follows: (1) The question presented depends solely upon a construction of Alabama taxing statutes. (2) The question can be decided in the courts of Alabama. (3) The complaint does not state a cause of action. (4) The Alabama Constitution prohibits the maintenance of an action against that State.

The first three objections relate only to the complaint's assertion that the claims of the State are invalid as amounting to an attempt to tax property of the United States. The State does not discuss the further contention that the claims are also invalid as resulting from proceedings in which the United States was made defendant without its consent. Hence, even if these objections were well-taken, they would not militate against the right of the United States to maintain the action.

Moreover, all of the objections are without substance.

1. The State argues (pp. 7–10) that the question depends solely upon Alabama taxing laws. However, it is evident that there is no dispute as

to the meaning of the relevant Alabama statutes. The Government agrees that section 372[1] imposes a lien as of October 1, 1936, for the taxes due October 1, 1937. Also, as the State's supporting brief concedes (pp. 3, 16), it is clear that, when the United States acquired the lands, the 1937 taxes had not been ascertained because the value of the lands had not been assessed and in some instances the rate of taxation had not been fixed. These are the only questions of Alabama law involved.

The question to be decided here is one of federal law. The Government will contend that lands are not liable for taxes until the amounts of the taxes have been ascertained by fixing the rate and assessing the value; that, because the values had not been assessed and the rates of taxation had not been fixed when the United States acquired the lands, the lands were not then liable for taxes; and that, since the State cannot tax property of the United States, it could not by subsequent assessments impose upon the lands liability for taxes.

This contention cannot be decided by resort to Alabama statutes. *Witherspoon* v. *Duncan*, 4 Wall. 210, 217. Indeed, the State's brief does not contend otherwise. Rather, it merely asserts (pp. 15–20) that the legislature of Alabama imposed this liability. If the liability of federal property to state taxes depended upon the varying

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[1] Act No. 194, Ala. Gen. Acts 1935, pp. 256, 566.

statutes of the several states, it is manifest that the states and not the United States would determine whether federal property should be taxed. "But whether the property of the United States shall be taxed under the laws of a State depends upon the will of its owner, the United States, and no State can tax the property of the United States without their consent." *Van Brocklin* v. *State of Tennessee,* 117 U. S. 151, 175.

2. The State asserts (pp. 11–15) that the question could be decided in a suit brought by the State against the United States in the courts of Alabama, if the United States would consent to such a suit. The argument that such a procedure is preferable to a suit in this Court assumes that the issue is to be determined by resort to the Alabama statutes. As just shown, the assumption is erroneous. Furthermore, as the State concedes (pp. 14, 20), Congress has not consented that the United States be sued in the courts of Alabama.

3. The State's further argument (pp. 15–20) that the complaint fails to state a cause of action likewise rests upon the assumption already shown to be erroneous, that the sole question presented is one of Alabama law, i. e., when, under the terms of section 372, Ala. Gen. Acts 1935, the lien for taxes attaches to assessed property. As stated, there is no question but that the statute imposes a lien as of October 1, but there are numerous cases

holding that such a statutory lien is ineffective until completion of levy and assessment.[2]

4. There is no merit in the State's final suggestion (pp. 20–21) that it may not be sued by the United States. *United States* v. *Texas*, 143 U. S. 621, 646; *Monaco* v. *Mississippi*, 292 U. S. 313, 329.

Respectfully submitted.

ROBERT H. JACKSON,
Attorney General.

FRANCIS BIDDLE,
Solicitor General.

JANUARY 1941.

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[2] *United States* v. *Pierce County*, 193 Fed. 529 (W. D. Wash., 1912); *Bannon* v. *Burnes*, 39 Fed. 892, 897, 898 (C. C. W. D. Mo., 1889); *Territory* v. *Perrin*, 9 Ariz. 316, 320 (1905); *State* v. *Snohomish County*, 71 Wash. 320, 324–326 (1912); *Portland* v. *Multnomah County*, 135 Ore. 469, 473 (1931); *City of Laurel* v. *Weems*, 100 Miss. 335, 340–341 (1911); *Gillmor* v. *Dale*, 27 Utah 372, 377 (1904); *State ex rel. Hinson* v. *Nickerson*, 99 Neb. 517, 520 (1916); *Denver* v. *Research Bureau*, 101 Colo. 140, 144 *et seq.* (1937). See also *United States* v. *City of Buffalo*, 54 F. 2d 471, 474 (C. C. A. 2, 1931); *United States* v. *Certain Land in City of St. Louis, Mo.*, 29 F. Supp. 92, 96 (E. D. Mo., 1939); *In re Opinions of the Justices*, 234 Ala. 358, 363 (1937).

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